IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 6569 of 2007(F)

PETITIONER:

EUREKA FORBES LTD., TITUS TOWERS, PALARIVATTOM, COCHIN-25, REPRESENTED BY ITS AREA SALES MANAGER, SAJITH M.K.

BY ADV. SRI.R.MURALIDHARAN (AROOR).

RESPONDENTS:
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1. **THE ASSISTANT COMMISSIONER (ASSESSMENT) SPECIAL CIRCLE-II, COMMERCIAL TAXES, ERNAKULAM.**
2. **THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, ERNAKULAM.**
3. **INSPECTING ASSISTANT COMMISSIONER COMMERCIAL TAXES, ERNAKULAM.**

BY SR. GOVT. PLEADER SRI. MOHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.6569 of 2007-F

Dated this the Ist day of March, 2007

JUDGMENT

The petitioner has preferred Ext.P11 appeal challenging Ext.P1 order of assessment assessing the petitioner to tax under Section 5 (2) of the Kerala General Sales Tax Act, 1963 in relation to the turn over of water filter-cum-purifier and vaccum cleaner. They are marketed under the brand name of Aquaguard water purifier and Euroclean Vaccum cleaners. The petitioner submits, it is not the brand name holder and therefore, not liable to tax under Sec.5 (2) of the K.G.S.T. Act. According to it, M/S.Electrolux which is a Swedish Company was the owner of the brand name 'Aquaguard.' M/S. Facit Asia Limited is the holder of the brand name for Euroclean. They being the brand name holders, the petitioner is not liable to tax under Sec.5 (2), it is submitted. Along with the appeal, the petitioner moved a stay petition. But, the said petition was disposed of by the appellate authority by Ext.P14, directing the petitioner to remit 40% of the balance tax due. The petitioner submits, the order has been passed mechanically and without application of mind and therefore the appellate authority may be directed to re-consider the stay application, taking into account the various materials produced by the petitioner.

2. The petitioner has failed to place before this court what is the connection between it and the Electrolux Limited. It is not in dispute that the petitioner was marketing the Aquaguard water purifiers during the assessment year. The brand name holder is a Swedish company. There must be somebody in India, who is manufacturing Aquaguards in India. If the petitioner is not doing that it must disclose from where it is getting Aquaguards.

3. It would appear that prima facie there is some substance regarding the marketing of Eruoclean vacuum cleaner because the Facit Asia Limited, the brand name holder, which is having business activities in India had some arrangement with the petitioner regarding the manufacture of the product as evident from Ext.P8. But, in relation to water purifier, I feel that the petitioner has not made out a strong prima facie case. Therefore the order of the appellate authority to pay 40% of the balance tax cannot be said to be arbitrary or irrational warranting interference under Art.226 of the Constitution of India. Accordingly, the challenge against Ext.P14 is repelled. It is made clear that the views expressed by me are only prima facie views and the appellate authority will not be bound by them, while passing

final orders in the appeal.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS